WISCONSIN LEGISLATIVE COUNCIL

REVIEW OF EMERGENCY DETENTION AND ADMISSION OF MINORS UNDER CHAPTER 51

Legislative Council Conference Room
Madison, Wisconsin

July 25, 2012
9:30 a.m. – 3:30 p.m.

[The following is a summary of the July 25, 2012, meeting of the Special Committee on Review of Emergency Detention and Admission of Minors Under Chapter 51. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at **http://www.legis.state.wi.us/lc**.]

Call to Order and Roll Call; Approval of the Minutes of the Meeting on May 14, 2012

Chair Lazich called the meeting to order. The roll call was taken and a quorum was present. The Special Committee reviewed the minutes of the previous meeting held on May 14, 2012.

Representative Ballweg moved, seconded by Mr. Kerwin, to approve the minutes of the May 14, 2012 meeting of the Special Committee. The motion was approved by a unanimous vote.

COMMITTEE MEMBERS PRESENT:	Sen. Mary Lazich, Chair; Rep. Sandy Pasch, Vice-Chair; Sen. Dave Hansen; and Public Members Dr. Jon Berlin, Michael Bachhuber, Kristin Kerschensteiner, George Kerwin, Dr. Gina Koeppl, Tally Moses, Galen Strebe, and Carianne Yerkes.
COMMITTEE MEMBERS EXCUSED:	Rep. Joan Ballweg; and Public Members Michael Kiefer, Brian Shoup, and Brenda Wesley.
COUNCIL STAFF PRESENT:	Laura Rose, Deputy Director, and Brian Larson, Staff Attorney.

Review of WLC: 0073/3, Relating to Emergency Detention, Involuntary Commitment, and Privileged Communications and Information

Ms. Rose was asked to review items in WLC: 0073/3 that had yet to be discussed or that included new language based on changes requested by the committee.

Ms. Rose reported to the committee on the progress of the working group that met in Milwaukee on June 4, 2012, to debate proposed changes to SECTIONS 13 and 14 of WLC: 0073/3. Those sections allowed for postponement of a probable cause hearing in some situations, such as when the subject individual is unable to participate for certain medical reasons. Ms. Rose indicated that at the working group meeting, concerns were raised about the due process implications of postponing a probable cause hearing. Also, it was pointed out these sections of the draft were probably unnecessary, because other workarounds existed. For example, Act 32 made improvements to the availability of video conference technology for ch. 51 proceedings. In an effort to facilitate increased use of such equipment in Milwaukee County, Nancy Rottier, of the Director of State Courts office, offered to enter into discussions with staff at the Milwaukee County Mental Health Complex and in the Milwaukee courts. Ms. Rose indicated that the ultimate recommendation of the working group was to remove SECTIONS 13 and 14 from the draft.

After a brief discussion of the recommendation of the working group, the committee agreed by unanimous consent to remove SECTIONS 13 and 14 from WLC: 0073/3.

Ms. Rose explained that under SECTION 1 of the draft, in addition to other requirements that must be met under ch. 51, a person may not be detained unless the detention is the least restrictive alternative because the individual is resistant to professional help or too high risk to be safely assisted on a voluntary basis. The committee began a discussion of the proposed language in SECTION 1 of WLC: 0073/3.

Speaking in favor of the proposed language, several members stated that the intention of SECTION 1 was to simply restate an existing requirement that is pervasive in ch. 51--namely, that an emergency detention must be the least restrictive alternative for addressing the person's mental health needs and the individual's and community's need for protection. The proposed language restates the purpose of ch. 51 that is present in the beginning of the chapter, and places it at the beginning of the emergency detention section, in order to re-emphasize this principle. Ms. Yerkes also spoke in support of the proposed language because it would prompt conversations between law enforcement officers and health care providers about least restrictive options when detention is being considered. Ms. Koeppl supported the proposed language and suggested that it could be strengthened by being even more direct.

Speaking against the proposed language, Mr. Strebe argued that it would be difficult to obtain witness testimony in support of the new requirement (i.e., testimony stating that a detention was the least restrictive option under the circumstances). It was noted that the Wisconsin Counties Association has opposed the SECTION 1 language for similar reasons. The committee also took note of comments from Alan Polan, a representative of the Milwaukee Corporation Counsel's office, who was present in the audience and who spoke against the proposed language for similar reasons.

The members of the committee engaged in a lengthy discussion about the proposed language and several alternatives to the proposed language. This included a discussion of how the proposed language may be interpreted by decision-makers under various scenarios, as well as a discussion of the role of informed consent in analyzing a requirement that a detention be the least restrictive option.

Mr. Strebe moved, seconded by Mr. Bachhuber, that SECTION 1 language be retained in the draft, but that it be stated so as to require a detention to be the least restrictive option "appropriate to the individual's needs." As modified, it would not require that the individual be resistant to professional help or be too high a risk to be voluntarily assisted.

Prior to a vote on the motion, the meeting was adjourned for lunch. Some members of the committee remained in the conference room over the lunch hour to debate the SECTION 1 language as an impromptu working group. The conference room remained open to the public during the working group meeting.

The committee meeting resumed after the lunch hour. Ms. Rose reported that the impromptu working group had reached an agreement as to the SECTION 1 language.

Mr. Strebe and Mr. Bachhuber withdrew the motion that was presented to the committee prior to the lunch break.

Dr. Berlin moved, seconded by Mr. Strebe, that the SECTION 1 language be retained in the draft, but that it be modified as follows: (1) a county department may not approve the emergency detention unless the county department reasonably believes that the individual will not voluntarily consent to evaluation, diagnosis and treatment, as necessary to stabilize the individual and remove the substantial probability of physical harm, impairment, or injury to himself, herself, or others; and (2) an introductory statement will be added to s. 51.15, Stats., stating that the purpose of emergency detention is to help individuals on an emergency basis who are mentally ill, drug dependent, or developmentally disabled; who are dangerous; and who are unable or unwilling to cooperate with voluntary treatment due to the mental illness, drug dependency, or developmental disability. The motion was approved on a vote of Ayes, 11; Noes, 0; and Absent, 4.

Ms. Rose next reviewed SECTION 2 of the draft, which was approved at the previous meeting. Current law allows for emergency detention, under the third standard of dangerousness, when there is a substantial probability of an injury or impairment to an individual due to the subject individual's impaired judgment. SECTION 2 provides that an emergency detention would also be allowed when there is a substantial probability of an injury or impairment to others.

Ms. Rose next reviewed SECTION 3 of the draft, which includes modified language based on a change approved at the previous meeting. SECTION 3 harmonizes the language of the fourth standard of dangerousness for emergency detention with the language of the fourth standard of dangerousness for involuntary commitment. SECTION 3 removes the phrase "drug dependency" so that it will not appear in either fourth standard.

Ms. Rose next reviewed SECTION 4 of the draft, which was approved at a prior meeting. SECTION 4 consolidates references to the types of facilities that may be used for detention. This led to a discussion of the meaning of the phrase "approved treatment facility" in the statute. Several members pointed to a lack of clarity, in some cases, as to when the 72-hour timeline for a probable cause hearing begins to run. This issue was addressed in the *Dolores M.* case, which has not been uniformly

interpreted by the counties. The committee discussed legislative options for addressing the issue, but did not reach a consensus on how to move forward.

> *Chair Lazich asked the committee members to create a working group to address issues arising under SECTION 4 of WLC: 0073/3 and to make a recommendation to the committee at the next meeting. The members who volunteered for the working group are: Mr. Bachhuber, Dr. Berlin, Ms. Kerschensteiner, Mr. Kerwin, Dr. Koeppl, Mr. Strebe, and Ms. Yerkes. Several other individuals in attendance signaled their interest in the topic and were encouraged by Chair Lazich to contact Ms. Rose in order to be added to the group.*

Ms. Rose next reviewed SECTIONS 5 and 8 of the draft, which modify the threshold for certain provisions in ch. 51 currently only applicable to counties with populations above 500,000. Under SECTION 5, the threshold is changed to 750,000. A brief discussion ensued.

After the discussion regarding SECTIONS 5 and 8, Dr. Berlin indicated that he strenuously disagreed with the increase in the threshold to 750,000. He asked if it would be possible to vote against this individual provision but in favor of the draft as a whole. Dr. Berlin was informed that, under the current plan, it will not be possible to vote for or against individual provisions. Rather, when it comes time to vote on the draft, the committee members will be asked to vote for or against WLC: 0073/3 as a whole.

Ms. Rose next reviewed SECTIONS 6 and 7 of the draft, which allow for a postponement of the 24-hour time period for a treatment director's determination, under some circumstances, if the subject individual must be evaluated and treated for non-psychiatric medical conditions.

Ms. Rose next reviewed SECTION 9 of the draft, which was approved at the previous meeting. This affects the third standard of dangerousness for involuntary commitment, and it closely parallels the change made under SECTION 2 with respect to emergency detention.

Ms. Rose explained that SECTIONS 10, 12, and 16 of the draft relate to the changes proposed under SECTIONS 13 and 14. Because the committee accepted the working group recommendation to remove SECTIONS 13 and 14 from the draft, Ms. Rose stated that SECTIONS 10, 12, and 16 will be removed as well.

Ms. Rose explained that SECTIONS 11 and 15 of the draft contain changes similar or related to those found in SECTION 4. The working group formed to address questions concerning the effect of the phrase "approved treatment facility," as it appears in the statutes, should address these sections as well.

Ms. Rose next reviewed SECTION 17 of the draft, which was approved at the previous meeting. Under current law, an involuntary commitment of an individual under the fourth standard of dangerousness may not continue for longer than 45 days in any 365-day period. SECTION 17 deletes this requirement.

Ms. Rose next reviewed SECTION 18 of the draft, which was approved at the previous meeting. Under current law, an involuntary commitment on an individual who is in prison may not continue beyond the inmate's date of release on parole or extended supervision. SECTION 18 deletes this requirement.

Ms. Rose next reviewed SECTION 19 of the draft, which was approved at the previous meeting. SECTION 19 amends an evidentiary statute in ch. 905 that provides there is no evidentiary privilege as to communications and information relevant to an issue in certain proceedings, including proceedings under ch. 51. The word "hospitalization" is changed to "commitment," and language is added to clarify that the provision applies to final as well as probable cause proceedings.

Discussion of Memo No. 2, Medical Assistance Eligibility for Incarcerated Persons

Mr. Larson reviewed Memo No. 2, concerning Medical Assistance (MA) eligibility for incarcerated persons upon release from custody. Over the years, CMS has encouraged states to find ways to ensure that individuals who qualify are fully enrolled in MA as of the date of their release. In some cases, states can accomplish this by suspending (rather than terminating) MA eligibility for an individual entering custody. Another approach is for the relevant state agencies to work together to fill out and process an MA application prior to release. Any effort to address this issue must also take the federal Supplemental Security Income (SSI) benefit into account, in part.

Mr. Larson indicated that Department of Health Services (DHS) and the Department of Corrections (DOC) last looked closely at this issue in 2004. They apparently ruled out the suspension option. Instead, the agencies planned to address the issue through a coordinated effort, as shown in the attachments to Memo No. 2. However, representatives from both agencies have said that the plan has not been widely utilized.

Ms. Kerschensteiner stated that her organization worked on this issue for a long time. She indicated that the Disability Determination Bureau (DDB), within DHS, was very resistant to the idea and suggested that DDB be included in a working group on this issue, if one is formed.

Mr. Larson, Mr. Bachhuber, Ms. Kerschensteiner, and other committee members discussed DOC's most recent effort to address MA eligibility issues, a pilot program involving personnel from Legal Action of Wisconsin (LAW). Under the pilot program, LAW works with individuals who are about to be released from custody to assist with the processing of an MA application on their behalf.

Chair Lazich suggested that the committee's goal should be to have the services available to individuals when they exit custody, and it may be that is has to be done legislatively.

> *Chair Lazich asked the committee members to create a working group to further discuss this issue and make a recommendation to the committee at the next meeting. The discussion should take into account all individuals who are released from custody and qualify for MA. The members who volunteered for the working group are: Mr. Bachhuber, Ms. Kerschensteiner, Mr. Kerwin, and Ms. Yerkes. Chair Lazich also indicated that she would send a letter to the Secretaries of DHS and DOC to request that they appoint individuals to join the working group.*

Review of WLC: 0114/1, Relating to Admission of Minors for Inpatient Treatment

Ms. Rose next reviewed items in WLC: 0114/1. She stated that the impetus for the draft was a concern about the clarity of the treatment of minors statute, in s. 51.13, Stats., and a concern that not all facilities in the state were aware of certain changes made to the statute in 2005 that made it easier for parents to obtain treatment of older minors aged 14 to 17 in certain cases.

Ms. Rose provided an overview of the operation of s. 51.13, Stats., under current law. She summarized the changes to s. 51.13 under WLC: 0114/1, as detailed in the Joint Legislative Council Prefatory Note to WLC: 0114/1.

Dr. Berlin explained that the changes under the draft apply only to a minor voluntary admission, which is a completely separate process from emergency detention. He noted that under the old law, a parent's power to sign in a child, along with a doctor's order, was restricted at age 14. If a child age 14 or older did not agree to the voluntary admission, the parent did not have the authority to sign in the child along with the doctor. The law was changed in 2005 to give parents additional authority to be the consenting party to a voluntary admission, against the child's wishes, for ages 14 to 17. Dr. Berlin stated that WLC: 0114/1 aimed to make it clearer how that could be done. He stated that Milwaukee County never implemented the change in 2005. The committee discussed the manner in which the change had been implemented in the state in 2005.

Ms. Rose also clarified that under the procedure in WLC: 0114/1, when a parent signs in a child aged 14 to 17 against the child's wishes, a hearing is required. Mr. Strebe described the hearings as very low-key.

> *Senator Hanson moved, seconded by Mr. Kerwin, that WLC: 0114/1 be approved by the committee. After some further discussion, the motion was approved on a vote of Ayes, 8; Noes, 0; Absent, 6; and Not Voting, 1.*

Other Business

There was no further business before the committee.

Plans for Future Meetings

The next meeting of the Special Committee will be held at the call of the chair.

Adjournment

The meeting was adjourned at 3:30 p.m.

BTL:jal